314 (25)

FILED
JUN 16 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 175

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

	Page
Statement of the Case	1
Reasons Relied on for the Allowance of the Writ	2
Questions Presented	3
I. The Opinion of the Court Below	5
II. Jurisdiction	5
III. Statement of the Case	6
IV. Specification of Errors	6
V. Argument	7
The United States Court of Appeals for the District of Columbia Erred in Holding that Congress did not Intend that the District of Columbia Would be Subject to Garnishment	7
Conclusion	15

CASES CITED.

Columbia Brick Company v. The District of Columbia, 1 App. D. C.	10
Croson v. District of Columbia, 55 Apps. D. C., 122	8
District of Columbia v. Selden, 63 Apps. D. C. 40, 68 Fed. (2nd) 988	12
District of Columbia v. Smith, 63 Apps. D. C. 363, 72 Fed. (2nd) 735	12
Erie Railroad v. Tompkins, 304 U. S. 64, 58 Supreme Court Reporter, 817	12
Federal Housing Administration v. Burr, 309 U. S. 242, 60 Sup. Ct. Rep. 488	8, 11
Keifer etc. v. Reconstruction Finance Corporation, 306 U. S. 381, 59 Sup. Ct. Rep. 516	14
McCarthy v. United States Shipping Board Merchant Fleet Corporation, 60 Appeals, 311	10
Metropolitan Railroad Company v. The District of Columbia, 132 U. S. Page 1	7, 15
Waterbury v. Board of Commissioners, 10 Montana 515, 26 Pacific Reporter, 1002	13

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

MARY E. CHEWNING, *Petitioner,*

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The petition of Mary E. Chewning respectfully shows to this Honorable Court:

STATEMENT OF THE CASE.

The petitioner, Mary E. Chewning, obtained a judgment against one Mary E. Butler, who is a nurse in the employ of Gallinger Hospital, and receives her salary from the District of Columbia, and on the 16th day of April, 1940, a garnishment was issued out of the District Court of the United States for the District of Columbia, attaching any

credits in the hands of the District of Columbia belonging to Mary E. Butler, in accordance with Sections 285, 286, 287 and 288 of Title 24 of the Code of Laws for the District of Columbia, complete to March 4, 1929, and on the 17th day of April, 1940, a motion to quash this garnishment was filed by the District of Columbia on the ground that the District of Columbia was a municipal corporation and exempt from garnishment proceedings involving the collection of private debts (R. 4), and this motion to quash was granted (R. 5).

A notice of an appeal was filed on April 17, 1940, and perfected the same day (R. 5), and the record in the case was filed in the United States Court of Appeals for the District of Columbia on May 1, 1940.

After argument on the merits of the cause on the 21st day of March, 1941, the United States Court of Appeals for the District of Columbia, on April 14, 1941, affirmed the decision of the District Court of the United States for the District of Columbia.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the United States Court of Appeals for the District of Columbia is on a question of general importance and is in conflict with its previous decisions and affects property rights.

2. The decision of the United States Court of Appeals for the District of Columbia presents a question relating to the construction of a Statute of the United States.

3. The decisions of the United States Court of Appeals for the District of Columbia do not give proper effect to the applicable decisions of this Court.

QUESTIONS PRESENTED.

1. Whether the United States Court of Appeals for the District of Columbia was in error in affirming the judgment of the District Court of the United States for the District of Columbia.

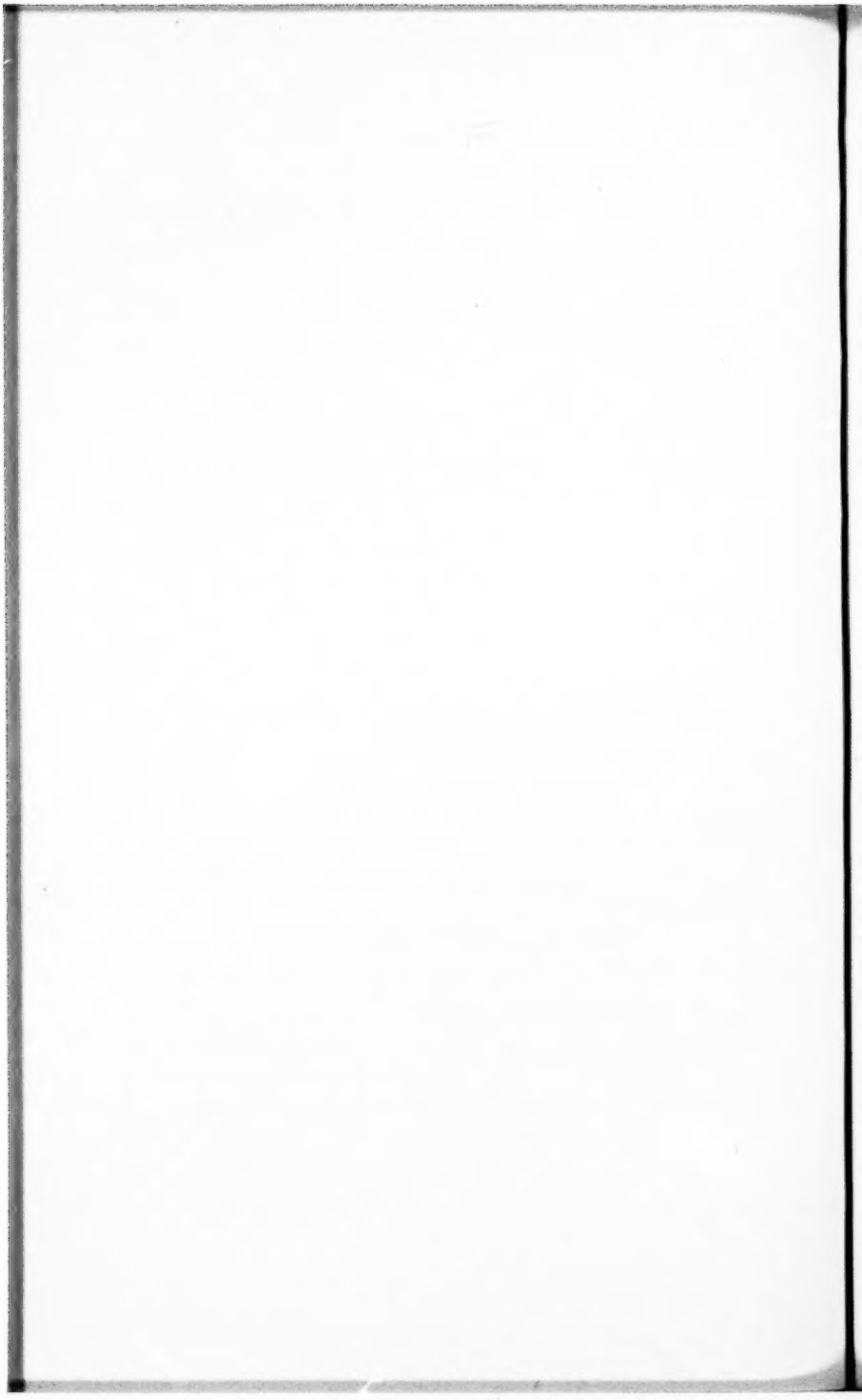
2. Whether the United States Court of Appeals for the District of Columbia was in error in holding that the District of Columbia was not subject to garnishment at the instance of a judgment creditor against his debtor, an employee of the District of Columbia.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7769, *Mary E. Chewning, Appellant,* v. *The District of Columbia, a Municipal Corporation, Garnishee, Appellee,* and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

MARY E. CHEWNING,

by

CORNELIUS H. DOHERTY,
1010 Vermont Avenue, N. W.,
Washington, D. C.,
Counsel for Petitioner.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. .....

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE, *Respondent*.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINION OF THE COURT BELOW.

The opinion of the United States Court of Appeals for the District of Columbia (R. 8-10) is reported in

II.

JURISDICTION.

1. The opinion of the United States Court of Appeals for the District of Columbia is dated April 14, 1941 (R. 8).

2. The United States Court of Appeals for the District of Columbia in sustaining the judgment of the District

Court of the United States for the District of Columbia, held that the District of Columbia, a municipal corporation, was not subject to the ordinary rules of garnishment proceedings in effect in the District of Columbia.

3. The United States Court of Appeals for the District of Columbia, in its construction of the Act of 1871 incorporating the District of Columbia, in Section 2, Title 20, of the D. C. Code of 1929, ignored its own decisions and applicable decisions of this Court in holding that the District of Columbia, as a corporation, is not subject to the ordinary rules covering garnishment proceedings.

4. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

III.

STATEMENT OF THE CASE.

A full statement of the case has been given under the heading "STATEMENT OF THE CASE" in the Petition, and, in the interest of brevity, the statement is not to be repeated at this point.

IV.

SPECIFICATION OF ERRORS.

1. The United States Court of Appeals for the District of Columbia erred in holding that Congress did not intend that the District of Columbia would be subject to garnishment.

2. The United States Court of Appeals for the District of Columbia erred in its construction of the Act of 1871 creating the District of Columbia.

3. The United States Court of Appeals erred in sustaining the action of the District Court of the United States for the District of Columbia.

V.

ARGUMENT.

The United States Court of Appeals for the District of Columbia Erred in Holding that Congress did not Intend that the District of Columbia Would be Subject to Garnishment.

The record in this case discloses that the respondent in the Courts below filed no pleading covering the merits of the cause of action but relied entirely upon the fact that the District of Columbia was a municipal corporation and exempt from garnishment proceedings for the collection of a private judgment. In the act of Congress of 1871, creating the District of Columbia, being Section 2, Title 20, of the D. C. Code of 1929, is the following:

> "Sec. 2. The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this title."

The question of the status of the District of Columbia has been before the United States Court of Appeals for the District of Columbia and in this Court on a number of occasions, and it has been held that the District of Columbia should be placed in the same category as a private person. It came before this Court for the first time in the case of *Metropolitan Railroad Company* v. *The District of Columbia*, 132 U. S. Page 1, decided October 21, 1889, and in which this Court said:

> "The first question, therefore, will be, whether the District of Columbia is, or is not, a municipal body merely, or whether it has such a sovereign character, or is so identified with or representative of the sovereignty of the United States as to be entitled to the prerogatives and exemptions of sovereignty."

and in answering this question the Court, at Page 9, said:

> "We are clearly of opinion that the plaintiff is a municipal corporation having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons."

The Court of Appeals for the District of Columbia, in the case of *Croson* v. *District of Columbia,* 55 Apps. D. C., 122, said:

> "The District of Columbia, as a municipal corporation, has the right to sue and be sued, but it possesses no sovereign power. * * * Its supreme legislative body is Congress. * * * The authority of Congress, as the Legislature of the District, is plenary."

It is very apparent from the foregoing decisions that the District of Columbia derived no sovereign power from the Act of Congress creating the District of Columbia, and the only question presented is whether or not under these circumstances the District of Columbia may be garnisheed for a private debt due from one of its employees.

Your petitioner in the Courts below relied upon the case of *Federal Housing Administration* v. *Burr,* 309 U. S., 242, 60 Supreme Court Reporter, P. 488, and decided February 12, 1940, in which this Court granted certiorari to review a judgment of the Supreme Court of Michigan. In this case garnishment proceedings were instituted against the Federal Housing Administration in accordance with the law of the State of Michigan, and the Federal Housing Administration contended that it was immune from garnishments of this kind, and this Court said at Page 244:

> "Since consent to 'sue and be sued' has been given by Congress, the problem here merely involves a determination of whether or not garnishment comes within the scope of that authorization. No question as to the power of Congress to waive the governmental immunity is present. For there can be no doubt that Congress has full power to endow the Federal Housing Administration with the Government's immunity from suit, or to determine the extent to which it may be subjected to the judicial process. * * *"

and again at Page 245:

> "Hence, when Congress establishes such an agency, authorizes it to engage in commercial and business transactions with the public, and permits it to 'sue and be sued,' it cannot be lightly assumed that restrictions on that authority are to be implied. Rather, if the general authority to 'sue and be sued' is to be delimited by implied exceptions, it must be clearly shown that certain types of suits are not consistent with the statutory or constitutional scheme, that an implied restriction of the general authority is necessary to avoid grave interference with the performance of a governmental function, or that for other reasons it was plainly the purpose of Congress to use the 'sue and be sued' clause in a narrow sense."

The Court then said this:

> Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceedings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. * * * But however it may be denominated, whether legal or equitable, and whenever it may be available, whether prior to or after final judgment, garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used these words in their usual and ordinary sense."

The District of Columbia stands in no different light than the Federal Housing Administration, Reconstruction Finance Corporation and others. They derive their power and authority from Congress, and the 'sue and be sued' clause should receive the same interpretation whether it referred to the District of Columbia or the Federal Housing Administration.

The United States Court of Appeals for the District of Columbia, in its opinion, states (R. 9-10) that in 1893 it decided the case of *Columbia Brick Company v. The District of Columbia*, 1 App. D. C., and held that the District was not subject to garnishment. The *Columbia Brick Company* case was a suit in equity, brought in the then Supreme Court of the District of Columbia against the District of Columbia to require it to retain any money it owed to Columbus Thomas, a general contractor, by reason of the contract to build a school house in the District of Columbia, to which the Columbia Brick Company had delivered materials. It was based upon Section 709 of the Revised Statutes relating to the District of Columbia, giving a sub-contractor the right to garnish or give notice to the owner of a building of his claim against his employer, and the Court did indirectly hold, while not necessary to a decision in that case, that the District of Columbia was not liable to garnishment proceedings, and stated at Page 356 the following:

> "But the great weight of authority is decidedly against allowing any garnishment or attachment at all in the hands of municipal corporations. It is not supposed to be within the contemplation of the legislature, unless expressly provided, because of its great inconvenience and embarrassment, and, therefore, against public policy."

The same reasoning was used by the United States Court of Appeals in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 60 Appeals, 311, in which it held that the Merchant Fleet Corporation was not subject to garnishment, it being contended in that case that the corporation had been liable to be sued in certain cases upon its contracts and torts like a private corporation, and accordingly could not claim to be exempt from garnishment as a public agency, but the Court said:

> "This conclusion, however, is not warranted, for such an agency may be permitted by law to 'sue and be sued' upon its obligations without being subjected

to attachment or garnishment in cases unrelated to its own duties or liabilities."

The question of public policy was referred to in the case of *Federal Housing Administration* v. *Burr*, at Page 249, wherein it stated that petitioner urged consideration of policy against the conclusion of the Court and stressed the heavy burden which would be imposed on such governmental instrumentalities if garnishment were permitted and concluded that if immunity of public bodies from garnishment is to be abrogated, it should be done by legislation, so that the remedy could be appropriately molded to fit the needs of the government, and this was answered by this Court at Page 249, as follows:

> "In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary."

Under Title 24, Section 286 of the Code of Laws for the District of Columbia, complete to 1929, an attachment may be levied upon the judgment debtor's goods, chattels and credits and interrogatories accompany the attachment, which must be answered within ten days, and the salary of an individual is subject to attachment and garnishment.

The District of Columbia is not exempt in any way from the benefits or the requirements of the foregoing Act, with the exception that the retirement salary of the teachers for the District of Columbia is referred to in Title 7, Section 77, of the Code of Laws for the District of Columbia, complete to March 4, 1929, as follows:

> "None of the money mentioned in this Chapter shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process."

from which it may be reasonably assumed that Congress intended that all other salaries of the employees of the District of Columbia were subject to execution, attachment or garnishment.

Had the judgment debtor in this particular case assigned her wages to your petitioner, and the District of Columbia had refused to honor this assignment, surely the District of Columbia would be subject to a direct suit for the amount of the assignment in the same manner as it would from the judgment debtor, in the event of its failure to pay the salary due. There have been a number of suits filed by the employees of the District of Columbia on alleged wage claims, such as *District of Columbia* v. *Selden*, 63 Apps. D. C. 40, 68 Fed. (2nd) 988, and *District of Columbia* v. *Smith*, 63 Apps. D. C. 363, 72 Fed. (2nd) 735.

The United States Court of Appeals stated in its opinion (R. 10), the following:

> "By keeping the Statute of 1871 in force for seventy years, and reenacting it after the courts had repeatedly decided that it did not subject the District to garnishment, Congress has in effect ratified the decisions."

The mere fact of the continued inactivity of Congress on this particular subject does not raise any such presumption. This Court in the case of *Erie Railroad* v. *Tompkins*, 304 U. S. 64, 58 Supreme Court Reporter, 817, said, in its reference to the case of *Swift* v. *Tyson*, which had been followed for a number of years:

> "But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else. * * *
>
> The authority and only authority is the State, and if that be so, the voice adopted by the State as its own (whether it be of its Legislature or of its Supreme Court) should utter the last word."

"Thus the doctrine of Swift v. Tyson is, as Mr. Justice Holmes said, 'an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct.' In disapproving that doctrine we do not hold unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states."

We cannot assume, under the circumstances, that Congress had knowledge of the cases referred to by the United States Court of Appeals, and further that the mere fact that Congress remained inactive on the question of garnishment in the District of Columbia, over a period of seventy years, could show that Congress thereby specifically intended that the District of Columbia would not be subject to the ordinary writs of garnishment, which it was taking advantage of in the Courts on its own behalf. The District of Columbia is one of the largest litigants in the Courts of the District of Columbia, and there is no sound reason of public policy or otherwise which would prevent it from being subject to garnishment covering the claims due from its employees.

A rather clear statement, relative to the question as to whether or not public policy requires that the salary of a municipal employee should be subject to garnishment proceedings, is set forth in the case of *Waterbury* v. *Board of Commissioners*, 10 Montana 515, 26 Pacific Reporter, 1002, which is as follows:

"Returning to the case at bar, we cannot agree that there is any reason why the great public duties of a county need be imperfectly performed, or that its business is in any danger of derangement, if it be compelled, by process of a court, to pay the salary of a servant to that servant's creditors. The county has no suit to defend, no counsel to employ, no witnesses to collect and pay. It has no burden cast upon it, and no

duty to perform, except to act as temporary stakeholder, to await the determination of a court, in an action in which the county has no interest.

The argument of public policy as to inconvenience to the county and its officers does not reach our mind with sufficient force to impair another view of law and of right that is recognized throughout the civilized world; that is, that debtors should pay their debts. This, of course, with the modification that the means of livelihood should be left to the debtor, which view is embodied in the laws of exemption from execution, which in this state are very liberal. The debtor's earnings for 30 days prior to the levy of a writ are exempt from seizure. The servant of the county is thus secured in his support, if he earns it, and the county is not liable to lose the services of competent officers. Indeed, it has never been observed that a county has difficulty in obtaining employees to do its work, and the county may surely obtain as good service from those who pay their debts as from those who avoid such payment, and are protected in the avoidance by the unsatisfying doctrine of public policy.

We conclude that there is no substantial argument from public policy which requires us to read the law as to garnishment of counties differently from what its letter seems to us to declare. Counties are not exempted from garnishment by statute. On the contrary, their liability to the process is within the letter of the law. We find nothing in the spirit or the doctrine of public policy which induces to add to or take from the letter. The judgment of the district court is reversed, and the cause is remanded, with directions to that court to enter judgment in favor of the plaintiff for $210.40, and interest at the rate of 10 per cent. per annum from the 12th day of March, 1888, and for the costs of this appeal."

In *Keifer etc.* v. *Reconstruction Finance Corporation,* 306 U. S. 381, 59 Sup. Ct. Rep. 516, the Court at Page 389 said:

"Congress may, of course, endow a governmental corporation with the government's immunity. But, always the question is: Has it done so?"

CONCLUSION.

It is respectfully submitted that Congress has not endowed the District of Columbia with any immunity from garnishment proceedings and that they are in the same category as a private individual, as this Court held in the case of *Metropolitan Railroad Co.* v. *District of Columbia, supra*, and that the decision of the United States Court of Appeals for the District of Columbia, deciding that the District of Columbia is not subject to the ordinary rules of garnishment, has not properly construed the Act of Congress creating the District of Columbia and has failed to give proper effect to the applicable decisions of this Court, which are set forth in this petition, and that this case is one calling for the exercise by this Court of its supervisory powers, in order that your petitioner may receive a fair and impartial decision and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Court of Appeals for the District of Columbia and finally reverse it.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

(26)

Office - Supreme Court, U. S.
FILED
JUL 19 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 175

MARY E. CHEWNING

Petitioner,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

RICHMOND B. KEECH,
Corporation Counsel, D. C.,
VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.
Attorneys for Respondent.

OF COUNSEL:
CHESTER H. GRAY,
Assistant Corporation Counsel, D. C.

CENTRAL DUPLICATING DIVISION—GOVERNMENT OF THE DISTRICT OF COLUMBIA

INDEX

Subject Index

	PAGE
Summary of Argument	1
Argument	2
The decision of the United States Court of Appeals for the District of Columbia involves no question of general importance and is not in conflict with any decision of this court	1
A municipal corporation is not subject to garnishment	2
The established rule has not been changed by the decision of this court in the case of Federal Housing Administration v. *Burr*	7
Conclusion	16

Cases Cited

Abbotsford v. *Johnson*, 98 U.S. 440	15
Armstrong Co. v. *Nu-Enamel Corp.*, 305 U.S. 315	15
Baltimore v. *Root*, 8 Md. 95, 63 Am. Dec. 692	6, 13
Bradley v. *Richmond*, 6 Vt. 121	7
Brewster v. *Gage*, 280 U.S. 327	15
Brown v. *District of Columbia*, 29 App. D. C. 273	9
Brown v. *Finley*, 3 MacArthur, 77	5, 13
Brush v. *Commissioner of Internal Revenue*, 300 U.S. 352	9
Buchanan v. *Alexander*, 4 How. 20	9, 11
Coates v. *District of Columbia*, 42 App. D. C. 194	9
Columbia Brick Co. v. *District of Columbia*, 1 App. D.C. 351	5
Derr & Thompson v. *Lubey*, 1 MacArthur, 187	4, 13
Dickens v. *Bransford Realty Co.*, 141 Tenn. 387, 210 S.W. 644	7
District of Columbia v. *May*, 63 App. D.C., 10, 68 Fed. (2) 755	9
District of Columbia v. *Totten*, 55 App. D.C., 312, 5 Fed. (2) 374	9
District of Columbia v. *Tyrrell*, 41 App. D. C. 463	9
Federal Housing Administration v. *Burr*, 309 U.S. 242	7, 9
Fort Smith v. *Quinn*, 170 Ark. 54, 278 S.W. 625	6
Greenleaf v. *Goodrich*, 101 U.S. 278	15
Grover & Baker Sewing Machine Co. v. *Florence-Sewing Machine Co.*, 18 Wall. 553	14
Harris v. *District of Columbia*, 256 U.S. 650	9

Haverty Loan & Savings Co. v. *McAfee*, 179 Ga. 673, 177 S.E. 241 6
Helvering v. *Reynolds Co.*, 306 U.S. 110 15
Indian Motocycle Co. v. *United States*, 283 U.S. 570 9
Johnson v. *District of Columbia*, 118 U.S. 19 9
Lay v. *Hammond*, 212 Cal. 655, 300 Pac. 10 6
Lewis v. *Denver*, 9 Colo. App. 328, 48 Pac. 317 ..... 4, 6
Logan v. *United States*, 144 U.S. 263 15
Loube v. *District of Columbia*, 67 App. D.C. 322, 92 Fed. (2) 473 9
Merrell v. *Campbell*, 49 Wis. 535, 5 N.W. 912 7
Merwin v. *Chicago*, 45 Ill. 133, 92 Am. Dec. 204 ..... 3, 5, 6
Mobile Trade Co. v. *Lott*, 12 Wall. 221 15
Orme v. *Kingsley*, 73 Minn. 143, 75 N.W. 1123 7
People v. *Omaha*, 2 Neb. 166 7
Pottier & Stymus Mnfg. Co. v. *Taylor*, 3 MacArthur, 4 ..... 5, 13
Rosenstock v. *New York*, 101 App. Div. 9, 91 N.Y. Supp. 737 7
Sanger v. *Waco*, 15 Tex. Civ. App. 424, 40 S.W. 548 7
Sheppard v. *Cape Girardeau*, 1 S.W. 305 7
Skrewes v. *Tennessee Coal, Iron & R. Co.*, 124 Ala. 629, 82 Am. St. Rep. 214, 27 So. 435 6
Switzer v. *Wellington*, 40 Kan. 250, 19 Pac. 620 6
Tillman v. *District of Columbia*, 58 App. D.C. 242, 29 Fed. (2) 442 9
Troy Laundry & Machine Co. v. *Denver*, 11 Colo. App. 368, 53 Pac. 256 6
United States v. *Mooney*, 116 U.S. 104 15
Van Cott v. *Pratt*, 11 Utah, 209, 39 Pac. 827 7
Wallace v. *Lawyer*, 54 Ind. 501, 23 Am. Rep. 661 6

TEXT BOOKS CITED

56 A. L. R. 601 5
6 McQuillin on Municipal Corporations (1936 Ed.) 771 2

STATUTES CITED

Act of May 3, 1802, 2 Stat. 195, D. C. Code of 1929, page 450 13
Act of Feb. 21, 1871, 16 Stat. 419, D. C. Code of 1929, page 469 13
Act of June 20, 1874, 18 Stat. 116, D. C. Code of 1929, page 474 13
Act of June 11, 1878, 20 Stat. 102, D. C. Code of 1929, page 477 14
Sec. 2, Title 20, D. C. Code of 1929 14
Sec. 628, Title 20, D. C. Code of 1929 10
Sec. 634, Title 20, D. C. Code of 1929 11
Sec. 635, Title 20, D. C. Code of 1929 11
Sec. 638, Title 20, D. C. Code of 1929 11

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 175

MARY E. CHEWNING

Petitioner,

v.

THE DISTRICT OF COLUMBIA, A MUNICIPAL CORPORATION, GARNISHEE,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

The facts are sufficiently stated in the petition and will not be repeated.

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the District of Columbia involves no question of general importance and is not in conflict with any decision of this court.

A municipal corporation is not subject to garnishment.

The established rule has not been changed by the decision of this court in the case of Federal Housing Administration v. Burr.

ARGUMENT

I

The question presented is not one of general importance.

The question here presented is not one of general importance, but involves only the construction of Acts of Congress relating solely to the District of Columbia. The decision of the United States Court of Appeals is, as we shall hereafter point out, consistent with the decisions of this court.

II

A municipal corporation is not subject to process of garnishment.

By the great weight of authority, municipal corporations are not subject to garnishment for the private debts of their employees or other persons.

In *6 McQuillin on Municipal Corporations* (1936 Ed.) section 2681, page 771, it is said:

> "GARNISHMENT OF MUNICIPAL CORPORATIONS. Municipal corporations and their officers having money or property in their hands to which other persons are entitled are generally held not liable to the creditors of such persons on attachment or garnishment process unless made so by statute or charter. The principle of these cases is that public officers, who are bound to transact the public business by certain rules and in prescribed forms should not be exposed to the expense, inconvenience and hazard incident to such proceedings."

There are two reasons for this rule. In the case of *Merwin* v. *Chicago*, 45 Ill. 133, 92 Amer. Dec., 204, one of the leading cases upon the subject, the court said:

> "Although this decision is not conclusive upon the question before us as *res adjudicata*, yet the entire spirit and reasoning upon which it is based must lead us to hold that a municipal corporation is not liable to process of garnishment. The question has been often before the American courts, and although the decisions are not uniform, in a large majority of the cases it has been held the writ would not lie. The reason given for these decisions is uniformly the same, and is substantially that given by this court in the case in 25 Illinois. It must be decided as a question of public policy. These municipal corporations are in the exercise of governmental powers to a very large extent. They control pecuniary interests of great magnitude, and vast numbers of human beings, who are more dependent on the municipal for the security of life and property, than they are on either the state or the federal government. To permit the great public duties of this corporation to be imperfectly performed, in order that individuals may the better collect their private debts, would be to pervert the great objects of its creation. That its efficiency for purposes of government would be impaired by holding it liable to garnishment, cannot be doubted.
>
> "A large and growing city like Chicago must constantly have hundreds of persons in its employment; and if the city cannot at short intervals make a settlement of these multitudinous accounts, but is liable to be drawn into court at the suit of every creditor of its numerous employees, it will not only be engaged in much expensive and vexatious litigation in which it has no interest, but, if unable to safely pay its employees and contractors, it

> may lose the services of persons that may be of much value."

In the case of *Lewis* v. *Denver*, 9 Colo. App., 328, 48 Pac. 317, another leading case, it was said:

> "* * * But the salary of a public officer is a provision made by law for his maintenance and support during his term, to the end that, without anxiety concerning his means of subsistence, he may be able to devote himself entirely to the duties of his office, and the public thus have the full benefit of his knowledge and ability in the services he is selected to render. If he could be deprived of his means of support by the garnishment of his salary, presumptively, his efficiency as an officer would be impaired, if not destroyed, and the public interests would suffer serious detriment."

The question presented is not novel in this jurisdiction. It was first decided in 1872 in the case of *Derr & Thompson* v. *Lubey*, 1 MacArthur, 187. In that case a garnishment had been served upon the District of Columbia for the satisfaction of a judgment previously obtained against one Lubey, Water Registrar of the District. The District answered the garnishment admitting the payment of the sum of $500 to Lubey, the judgment debtor, after the attachment was laid, and setting up that the salary of Lubey, because he was an officer of a municipal corporation, was not subject to attachment. Counsel for the garnishor moved the court for judgment of condemnation against the District on its answer. Upon the overruling of that motion, an appeal was taken to the Supreme Court of the District of Columbia sitting in general term, where the judgment of the trial court was sustained, the court saying:

> "The decision of the Court below must be affirmed. We are all of the opinion that process of attachment will not lie to garnishee the salaries due from the District Government to its officers, on the ground of public convenience and necessity."

This case was followed by the same court in the cases of *Pottier and Stymus Manufacturing Company* v. *Taylor,* 3 MacArthur, 4, and *Brown* v. *Finley,* 3 MacArthur, 77. The Court of Appeals for the District of Columbia, in the case of *Columbia Brick Company* v. *District of Columbia,* 1 App. D. C. 351, also followed the same rule, saying:

> "It is true, the authorities upon this subject are not harmonious; and while some of the cases hold that funds in the hands of municipal corporations may be attached or arrested by garnishment, others hold that such bodies should be exempt from garnishment *only* for certain classes or species of debts due by them. But the great weight of authority is decidedly against allowing any garnishment or attachment at all in the hands of municipal corporations. It is not supposed to be within the contemplation of the legislature, unless expressly provided, because of its great inconvenience and embarrassment, and therefore against public policy."

That court then quoted with approval from the case of *Merwin* v. *Chicago,* supra.

The authorities upon this subject are collected in an exhaustive note in 56 A. L. R., 601. While some conflict upon this proposition does exist, most of the decisions can be reconciled upon a consideration of the statutes there involved. In some States the statutes specifically permit writs of garnishment to be directed against municipal corporations, and in others the statutes specifically prohibit the issuance of such writs. In

a few States the courts have construed the general statutes relating to the issuance of garnishment as broad enough to permit garnishment to be issued against municipalities. But the great weight of authority is, that, in the absence of a specific statute authorizing the issuance of such a writ against a municipality, it cannot be so issued.

In the case of *Troy Laundry & Machine Company* v. *Denver*, 11 Colo. App. 368, 53 Pac. 256, it was held that a statute, which provided that "all municipal corporations shall be subject to garnishment upon writs of attachment and executions in the same manner that private corporations and persons are now," applied only to a garnishment for a debt owed by the city to a claimant, and did not authorize the issuance of writs of garnishments for the collection of debts owed by the employees of the municipality to third persons.

The rule that a municipality is exempt from garnishment, in the absence of a statute specifically providing to the contrary, has been adopted in the following jurisdictions;

Alabama (*Skrewes* v. *Tennessee Coal, Iron & R. Co.*, 124 Ala. 629, 82 Am. St. Rep. 214, 27 So. 435).

Arkansas (*Fort Smith* v. *Quinn*, 170 Ark. 54, 278 S.W. 625).

California (*Lay* v. *Hammond*, 212 Cal. 665, 300 Pac. 10).

Colorado (*Lewis* v. *Denver, supra*).

Georgia (*Haverty Loan & Savings Co.* v. *McAfee*, 179 Ga. 673, 177 S.E. 241).

Illinois (*Merwin* v. *Chicago, supra*).

Indiana (*Wallace* v. *Lawyer*, 54 Ind. 501, 23 Am. Rep. 661).

Kansas (*Switzer* v. *Wellington*, 40 Kan. 250, 19 Pac. 620).

Maryland (*Baltimore* v. *Root*, 8 Md. 95, 63 Am. Dec. 692).

Minnesota (*Orme* v. *Kingsley*, 73 Minn. 143, 75 N.W. 1123).

Missouri (*Sheppard* v. *Cape Girardeau*, 1 S.W. 305).

Nebraska (*People* v. *Omaha*, 2 Neb. 166).

New York (*Rosenstock* v. *New York*, 101 App. Div. 9, 91 N.Y. Supp. 737).

Tennessee (*Dickens* v. *Bransford Realty Co.*, 141 Tenn. 387, 210 S.W. 644).

Texas (*Sanger* v. *Waco*, 15 Tex. Civ. App. 424, 40 S.W. 548).

Utah (*Van Cott* v. *Pratt*, 11 Utah, 209, 39 Pac. 827).

Vermont (*Bradley* v. *Richmond*, 6 Vt. 121).

Wisconsin (*Merrell* v. *Campbell*, 49 Wis. 535, 5 N.W. 912).

We submit that the decision of the court below is in accord with the great weight of authority.

III

The established rule has not been changed by the case of Federal Housing Administration v. Burr.

Counsel for appellant relies upon the recent decision of this Court in the case of *Federal Housing Administration* v. *Burr*, 309 U.S. 242, in which it was held that the administrator of the Federal Housing Administration, since he was authorized by Congress "to sue and be sued in any court of competent jurisdiction, State or Federal", was also subject to process of garnishment. But this court did not hold, as counsel for appellant contends it did, that the authority to sue and be sued necessarily subjects one to garnishment. This court merely construed the statute there involved, and determined the intent of Congress as expressed therein. The Federal Housing Administration was created by Congress and authorized, as stated by this court, "to engage in commercial and business transac-

tions with the public." Its activities were similar to those of private corporations. That this Court recognized the distinction between a corporation of this character and a municipal corporation is apparent from the following excerpts from its opinion:

> "* * * In the absence of such showing, it must be presumed that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue or be sued,' that agency is not less amenable to judicial process than a private enterprise under like circumstances would be.
>
> "* * * Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used those words in their usual and ordinary sense. State decisions barring garnishment against a public body though it may 'sue and be sued' are not persuasive here as they reflect purely local policies concerning municipalities, counties and the like, and involve considerations not germane to the problem of amenability to suit of the modern federal governmental corporation."

The District of Columbia is not a "modern federal governmental corporation" authorized "to engage in commercial and business transactions with the public", and "launched * * * into the commercial world", but is a municipal corporation possessing not only the ordinary governmental functions of a municipality, but in addition many functions ordinarily performed by a State,—for example, the maintenance of penal and correctional institutions for the incarceration of persons convicted of crimes against the sovereignty; the maintenance of a department of insurance and an office for the licensing and titling of automobiles and the issuance and revocation of operators' permits. Both this court and the United States

Court of Appeals for the District of Columbia have held that the District of Columbia exercises governmental functions, such as the sprinkling of streets to keep down dust (*Harris* v. *District of Columbia*, 256 U.S. 650); designing of sewers (*Johnson* v. *District of Columbia*, 118 U.S. 19); maintenance of a fire department (*Brown* v. *District of Columbia*, 29 App. D.C. 273); maintenance of public schools (*District of Columbia* v. *Tyrrell*, 41 App. D.C. 463); disinfection of dairies (*Coates* v. *District of Columbia*, 42 App. D.C. 194); maintenance of a workhouse (*District of Columbia* v. *Totten*, 55 App. D.C. 312, 5 Fed. (2) 374); maintenance of sprinkler on streets for the comfort, amusement and pleasure of children (*Tillman* v. *District of Columbia*, 58 App. D.C. 242, 29 Fed. (2) 442); installation of fire control boxes (*District of Columbia* v. *May*, 63 App. D.C. 10, 68 Fed. (2) 755), and collection of garbage, (*Loube* v. *District of Columbia*, 67 App. D.C. 322, 92 Fed. (2) 473).

Attention is also invited to recent cases decided by this court, which did not arise in the District of Columbia, in which this court held certain functions which are performed by the District to be governmental. These are maintenance of a police department (*Indian Motocycle Co.* v. *United States*, 283 U.S. 570, 579) and the maintenance of a water department (*Brush* v. *Commissioner of Internal Revenue*, 300 U.S. 352).

In this case it will be noted that the employee whose wages are sought to be attached is a nurse at Gallinger Municipal Hospital. The maintenance of the hospital is undoubtedly a governmental function.

In the *Burr* case, this court distinguished from the case of *Buchanan* v. *Alexander*, 4 How. 20. In the *Buchanan* case this court said:

> "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this

respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers, and men of the army and of the navy; and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service.

"The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by State process or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen."

The attention of this court is invited to the several provisions of law applicable to the disposition of the District of Columbia funds set forth in Title 20, Chapter 4, D. C. Code of 1929, under the heading "Finances", from which the following excerpts are quoted:

"The Collector of Taxes for said District shall collect all revenues of the District and deposit the amounts collected daily with the Treasurer of the United States." (Sec. 628)

"All taxes collected shall be paid into the Treasury of the United States, and the same, as well as the appropri-

ations made by Congress for the expenses of the District of Columbia, shall be disbursed for the expenses of said District, on itemized vouchers, which shall have been audited and approved by the Auditor of the District of Columbia, certified by said Commissioners, or a majority of them; * * *". (Sec. 634)

"All monies appropriated for the expenses of the government of the District of Columbia, together with all revenues of the District of Columbia from taxes or otherwise, shall be deposited in the Treasury of the United States, as required by the provisions of Section 634 of this Title, and shall be drawn therefrom only on requisition of the Commissioners of the District of Columbia, such requisition specifying the appropriation upon which the same is drawn * * *." Sec. 635).

By the Act relating to the office of the Disbursing Officer of the District of Columbia (Title 20, Sec. 638, D. C. Code of 1929), it is provided:

"The disbursing officer shall be appointed by the Commissioners, and shall give bond to the United States in the sum of fifty thousand dollars, for the benefit of the United States, the District of Columbia, the Commissioners of the District of Columbia, and all persons interested conditioned for the faithful performance of the duties of his office in the disbursing and accounting, according to law, for all moneys of the United States and of the District of Columbia that may come into his hands * * *."

The disbursing officer of the District of Columbia is thus the agent of the United States as well as of the District of Columbia, and the case of *Buchanan* v. *Alexander*, supra, applies to the District of Columbia.

The time consumed in the preparation of answers to the interrogatories propounded in a writ of garnishment is by no means small. If it be held that such a writ may be served upon the disbursing officer, he must compute the amount due the employee whose wages are garnished and gather such other information as may be called for by the interrogatories propounded. All of this he must forward to the Corporation Counsel for the preparation of the answers. Should the disbursing officer make an error in computing the amount due the employee, or, should, in the press of public affairs, the employee's salary be paid him after the writ has been served, or should the answer to the writ not be filed within time, the District would be required to pay to the judgment creditor money of the taxpayers which was not legally due the employee. Frequently questions arise in garnishment proceedings as to just what is the amount due from the garnishee to the judgment debtor. The District thus would be drawn, at the expense of the taxpayers, into vexatious litigation in which it has no interest. When we consider that the District has upwards of 12,000 employees and, in addition, from time to time owes money to numerous contractors, and other creditors, it will be seen that, if it now be held that the District is subject to garnishment, a large increase will be necessary in the personnel of the disbursing office and the corporation counsel's office to care for the additional duties thus entailed—duties which have no relation to the purposes for which the municipal corporation was created.

Inasmuch as this court, in the *Burr* case supra, based its decision on the implied intention of Congress to waive the immunity of the Federal Government from suit with respect to "a governmental agency" launched "into the commercial world", the question here necessarily is whether there was any implied intention on the part of Congress in creating the District of Columbia a municipal corporation to waive the immunity ordinarily existing as to such a corporation. A

review of the legislative history of the District of Columbia may be helpful.

By the Act of May 3, 1802, incorporating the City of Washington, (2 Stat. 195, D. C. Code of 1929, page 450) it was provided that the City of Washington "may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons". We have been unable to find any case, and counsel for appellant cites none, where it has been held that this language rendered the City of Washington liable to garnishment. On the other hand, it was held in 1855, in the case of *Baltimore* v. *Root*, 8 Md. 95, 63 Am. Dec. 692, that the City of Baltimore was not subject to garnishment although its charter contained the same language with respect to liability to suit as did the charter of the City of Washington. It must be remembered that the land now forming the District of Columbia was originally part of the State of Maryland. The first Act creating the District of Columbia a municipal corporation was not passed until after the decision of the Maryland court in the *Baltimore case*. (Act of February 21, 1871, 16 Stat. 419, D. C. Code of 1929, page 469.) Under this Act the District of Columbia was authorized to "sue and be sued, plead and be impleaded". In 1872, in the case of *Derr & Thompson* v. *Lubey*, 1 MacArthur 187, the Supreme Court of the District, sitting in general term, the then highest court in the District, held that by these words Congress did not intend to waive the immunity of a municipal corporation from garnishment. On June 20, 1874, Congress passed the temporary Organic Act, 18 Stat. 116, D. C. Code of 1929, page 474, which repealed the provisions of the Act of 1871 relating to the method of government of the District and set up temporarily a commission form of government, but left unchanged the provisions of the Act of 1871 with respect to the liability of the District to suit. Thereafter the two cases of *Pottier & Stymus Manufacturing Company* v. *Taylor*, 3 MacArthur, 4, and *Brown* v. *Finley*, 3 MacArthur, 77, were decided, in which the ruling of the court in the *Derr* case was followed.

Then came the present Organic Act, the Act of June 11, 1878, 20 Stat. 102, D. C. Code of 1929, page 477, by which it was provided in section 1:

> "The District of Columbia shall remain and continue a municipal corporation, as provided in section two of the Revised Statutes relating to said District."

Section two of the Revised Statutes relating to the District of Columbia (Sec. 2, Title 20, D. C. Code of 1929.) was taken from the Act of 1871 and reads as follows:

> "Sec. 2. The District is created a government by the name of the District of Columbia, by which name it is constituted a body-corporate for municipal purposes, and may contract and be contracted with, sue and be sued, plead and be impleaded, have a seal, and exercise all other powers of a municipal corporation not inconsistent with the Constitution and laws of the United States and the provisions of this title."

Thus Congress, by the present Organic Act, adopted the language of the Act of 1871 with respect to the liability of the District to suit, which language had already been construed by the highest court of this District as not constituting a waiver of the immunity of a municipal corporation from process of garnishment. It is a well recognized rule of construction that the presumption is that, where Congress adopts in a later Act words which have received a judicial construction in an earlier Act relating to the same subject matter, Congress adopted such words with the previous construction in mind.

In the case of *Grover & Baker Sewing Machine Company* v. *Florence Sewing Machine Company*, 18 Wall. 553, 584, this court said:

> "* * * the well established rule applies in construing the later act, that words and phrases, the meaning of

> which in a statute have been ascertained by judicial interpretation, are, when used in a subsequent statute, to be understood in the same sense."

See also:

Mobile Trade Co. v. *Lott*, 12 Wall. 221, 224,
The Abbotsford v. *Johnson*, 98 U.S. 440,
Greenleaf v. *Goodrich*, 101 U.S. 278, 281,
United States v. *Mooney*, 116 U.S. 104,
Logan v. *United States*, 144 U.S. 263, 301,
Armstrong Co. v. *Nu-Enamel Corp.*, 305 U.S. 315, 332.

The same rule has been applied even in cases where the interpretation of the language in the prior statute was not judicial but merely administrative. *Brewster* v. *Gage*, 280 U.S. 327, 337, *Helvering* v. *Reynolds Co.*, 306 U.S. 110, 114, 115.

The *Columbia Brick Company* case was decided by the Court of Appeals in 1893, forty-eight years ago. Had this decision misinterpreted the intent of Congress, Congress has had ample time to correct the error. By failing to take action it may be assumed that Congress is satisfied with the law as there construed.

Counsel for petitioner contends that, because the teachers' retirement Act provides that retirement pay shall not be assignable or be subject to attachment, garnishment, or other legal process, it follows necessarily that Congress intended that in all other cases the District should be subject to garnishment. We contend on the other hand that Congress intended to insure to teachers who had grown old in the service a means of livelihood free from the claims of creditors even after the retirement pay had come into the hands of the teacher.

Counsel for petitioner also lays stress upon the fact that an employee of the District may sue for his salary. We do not deny that the District of Columbia may, by an appropriate

proceeding, be compelled to pay to an employee the salary he has earned, but that is a far different matter from requiring the District to pay over to some third party the salary due such employee.

CONCLUSION

We respectfully submit that the decision of the court below was correct, and that the petition for writ of certiorari should not be granted.

RICHMOND B. KEECH,
Corporation Counsel, D. C.,

VERNON E. WEST,
Principal Assistant Corporation Counsel, D. C.,
Attorneys for Respondent.

OF COUNSEL:

CHESTER H. GRAY,
Assistant Corporation Counsel, D. C.,

(21)

Office - Supreme Court, U. S.
FILED
NOV 6 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 175

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, a Municipal Corporation, Garnishee, *Respondent*.

PETITION OF MARY E. CHEWNING FOR A REHEARING.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Page

Petition For Rehearing 1

CASES CITED.

Croson v. The District of Columbia, 55 Appeals D. C. 22 3

District of Columbia v. Selden, 63 Apps. D. C. 40, 68 Fed. 988 6

District of Columbia v. Smith, 63 Apps. D. C. 363, 72 Fed. (2nd) 735 6

Federal Housing Administration v. Burr, 309 U. S. 242, 60 Supreme Court Rep. 488 ..... 4, 6

McCarthy v. United States Shipping Board Merchant Fleet Corporation, 60 Appeals D. C. 311, 53 Fed. (2nd) 923 ..... 4, 5

Metropolitan Railroad Company v. District of Columbia, 132 U. S. 1 ..... 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 175

MARY E. CHEWNING, *Petitioner*,

v.

THE DISTRICT OF COLUMBIA, a Municipal Corporation, Garnishee, *Respondent*.

PETITION FOR REHEARING.

Comes now the above named petitioner, Mary E. Chewning, and presents this, her petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

Your petitioner respectfully states that the decision of the United States Court of Appeals in this cause is not consistent with the fundamental principles set forth in certain decisions of this Court, and that the action of the Court in refusing to grant a writ of certiorari is not consistent with its decisions or with its actions in other cases.

The only question presented to the District Court, to the United States Court of Appeals and to this Court is set forth in the opinion of the United States Court of Appeals (R. 8 and 9):

> "The question is whether, as the District Court held, the District of Columbia is exempt from garnishment proceedings for the collection of a private judgment. This is a question of statutory construction. The garnishment statute does not mention the District, but refers generally to 'any garnishee'."

In the case of *Metropolitan Railroad Company* v. *District of Columbia*, 132 U. S. 1, the Court, in its opinion, at Page 3, stated:

> "It is contended by the plaintiff that it (the District of Columbia) is not amenable to the statute of limitations, for three reasons: first, because of its dignity as partaking of the sovereign power of government; secondly, because it is not embraced in the terms of the statute of limitations in force in the District; and, thirdly, because if the general words of the statute are sufficiently broad to include the District, still, municipal corporations, unless specially mentioned, are not subject to the statute.
>
> 1. The first question, therefore, will be, whether the District of Columbia is, or is not, a municipal body merely, or whether it has such a sovereign character, or is so identified with or representative of the sovereignty of the United States as to be entitled to the prerogatives and exemptions of sovereignty."

and again at Page 7:

> "In view of these laws, the counsel of the plaintiff contend that the government of the District of Columbia is a department of the United States Government, and that the corporation is a mere name, and not a person in the sense of the law, distinct from the government itself. We cannot assent to this view. It is contrary to the express language of the statutes. That language is that the District shall 'remain and continue a municipal corporation,' with all rights of ac-

> tion and suits for and against it. If it were a department of the Government, how could it be sued? Can the Treasury Department be sued? or any other department? We are of opinion that the corporate capacity and corporate liabilities of the District of Columbia remain as before, and that its character as a mere municipal corporation has not been changed."

and again at Page 9:

> "We are clearly of opinion that the plaintiff is a municipal corporation, having a right to sue and be sued, and subject to the ordinary rules that govern the law of procedure between private persons."

and again at Page 10:

> "Corporations are 'persons' in the law. There is no apparent reason why they should not be included in the statute. It is conceded that private corporations are included. On what ground, then, can municipal corporations be excluded? Not on the ground that they are not 'persons,' for that would exclude private corporations. They are, therefore, within the terms of the law.
>
> 3. Are they not also within the spirit and reason of the law? They are certainly within the reason of the preamble. It is just as much for the public interest and tranquility that municipal corporations should be limited in the time of bringing suits as that individuals or private corporations should be."

This case clearly indicates that the District of Columbia is not entitled to any consideration other than that to which any private suitor would be entitled.

The fundamental principles of law involved in the *Metropolitan Railroad* case are followed in the case of *Croson* v. *The District of Columbia*, 55 Appeals D. C. 22.

As to the question of statutory construction of the words "sue and be sued", the Court of Appeals indicated, in its opinion, that because the Supreme Court of the District of Columbia, in 1873, held that the District of Columbia was not subject to garnishment, and that that view was held in

the Court of Appeals in 1893, that by Congress permitting those decisions to stand without Congressional action was, in effect, a ratification of those decisions. In answer to this, it is respectfully submitted that it cannot be so considered unless the matter was presented directly to Congress, and it is fair to assume that very few, if any, of the legislators, during that period of time, had any knowledge of these decisions.

If we were to follow this reasoning we would have the decision of the United States Court of Appeals in the case of *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, 60 Appeals D. C., 311, 53 Fed. (2nd) 923, decided November 2, 1931, and it can be said that the United States Shipping Board Merchant Fleet Corporation, was a corporation similar to the Federal Housing Corporation and Home Owners' Loan Corporation, and others, and in that case it was contended that the Fleet Corporation had been liable to be sued in certain cases upon its contracts and torts like a private corporation, and accordingly could not claim to be exempt from garnishment as a public agency, and the United States Court of Appeals said, at Page 311:

> "This conclusion, however, is not warranted, for such an agency may be permitted by law to sue or be sued upon its obligations without being subjected to attachment or garnishment in cases unrelated to its own duties or liabilities."

and thereafter Congress creating the Federal Housing Corporation by the Act of June 27, 1934, C. 847, 48 Stat. 1246, as amended by Act of Aug. 23, 1935, C. 614, 49 Stat. 684, 722, and placing therein the same words, that it may "sue and be sued" and this Court, in the case of *Federal Housing Administration* v. *Burr*, 309 U. S. 242, 60 Supreme Court Rep. 488, giving to these words an entirely different construction, saying, at Page 245:

> "Clearly the words 'sue and be sued' in their normal connotation embrace all civil process incident to the commencement or continuance of legal proceed-

> ings. Garnishment and attachment commonly are part and parcel of the process, provided by statute, for the collection of debts. * * * But however it may be denominated, whether legal or equitable, and whenever it may be available, whether prior to or after final judgment, garnishment is a well-known remedy available to suitors. To say that Congress did not intend to include such civil process in the words 'sue and be sued' would in general deprive suits of some of their efficacy. Hence, in absence of special circumstances, we assume that when Congress authorized federal instrumentalities of the type here involved to 'sue and be sued' it used these words in their usual and ordinary sense."

The decision of this Court is directly contrary to the decision of the United States Court of Appeals in *McCarthy* v. *United States Shipping Board Merchant Fleet Corporation*, and if we must assume that Congress ratified the early decisions of the Supreme Court of the District and the United States Court of Appeals, relative to garnishment against the District of Columbia, we must go further and assume that Congress ratified the decision of the United States Court of Appeals, which was decided in 1931, and that there could be no garnishment of corporations similar to the United States Shipping Board Merchant Fleet Corporation, but that is not so, and this Court has definitely held that they can be garnisheed.

It is inconsistent to hold that there is insufficient evidence of sovereignty in the District of Columbia to permit its pleading the Statute of Limitations, but that there is sufficient evidence of such sovereignty in the District of Columbia to prevent its being garnisheed in a private proceeding.

The judgment debtor in this case could sue the District of Columbia for her wages or she might assign her wages to your petitioner and your petitioner, without doubt, could sue the District of Columbia on this assignment, for there are a number of cases in which such suits were brought;

District of Columbia v. *Selden,* 63 Apps. D. C. 40, 68 Fed. 988, and *District of Columbia* v. *Smith,* 63 Apps. D. C. 363, 72 Fed. (2nd) 735.

We have the strange situation of a judgment debtor in an ordinary private corporation or a governmental corporation of the type of the Federal Housing Administration being under the compulsion of paying their just obligations by garnishment proceedings issued against their employers, and another judgment debtor employed by the District of Columbia being free from any such compulsion.

In the opinion of the United States Court of Appeals (R. 9) the Court says:

> "The District has 12,000 employees, and from time to time owes money to many other persons. It states that if it is subject to garnishment, it must expand its disbursing office and its corporation counsel's office."

This situation is the same for any private corporation and also with the corporations of the type of the Federal Housing Administration, and the only thing that they are called on to do is to answer the question:

> "Were you at the time of the service of the annexed writ of attachment, or have you been between the time of such service and the filing of your answer to this interrogatory indebted to the defendant, and, if so, how, and in what amount?"

and then hold the judgment debtor's salary until an order has been passed in Court, and this order protects the garnishee from any further liability. This same contention was urged in the *Burr* case and was answered by this Court, at Page 249, as follows:

> "In our view, however, the bridge was crossed when Congress abrogated the immunity by this 'sue and be sued' clause. And no such grave interference with the federal function has been shown to lead us to imply that Congress did not intend the full consequences of

what it said. Hence, considerations of convenience, cost and efficiency which have been urged here are for Congress which, as we have said, has full authority to make such restrictions on the 'sue and be sued' clause as seem to it appropriate or necessary."

For the foregoing reasons, and for the further reasons set forth in the Petition for a Writ of Certiorari, it is respectfully urged that the petition for a rehearing be granted and that the judgment of the Court denying the petition for a writ of certiorari be reconsidered, and that a writ of certiorari be granted, for the reason that the fundamental principles of the law involved herein are of sufficient conconsequence to require this Court to allow a writ merely for the purpose of clarification of these decisions, even though the decision of the United States Court of Appeals in this case should be upheld, for it is your petitioner's belief that the decisions of the United States Court of Appeals are in direct conflict with the decisions of this Court and its views as to the statutory construction of the words "sue and be sued".

Respectfully Submitted:

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

I, Cornelius H. Doherty, counsel for the above named Mary E. Chewning, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.